

## MINING IN NATIONAL FORESTS Protection of Surface Resources<sup>1</sup>

### **Mineral Resources of the National Forest System**

The 192-million-acre National Forest System is an important part of the Nation's resource base. As directed by the Organic Administration Act of 1897 and the Multiple Use-Sustained Yield Act of 1960, the National Forests are managed by the United States Department of Agriculture's Forest Service for continuous production of their renewable resources – timber, clean water, wildlife habitat, forage for livestock and outdoor recreation.

Although not renewable, minerals are also important resources of the National Forests. In fact, they are vital to the Nation's welfare. By accident of category and geology, the National Forests contain much of the country's remaining stores of mineral – prime examples being the National Forests of the Rocky Mountains, the Basin and Range Province, the Cascade-Sierra Nevada Ranges, the Alaska Coast range, and the States of Missouri, Minnesota, and Wisconsin. Less known by apparently good mineral potential exists in the southern and eastern National Forests.

Geologically, National Forest System lands contain some of the most favorable host rocks for mineral deposits. Approximately 6.5 million acres are known to be underlain by coal. Approximately 45 million acres or one-quarter of National Forest System lands have potential for oil and gas, while about 300,000 acres within the Pacific Coast and Great Basin States have potential for geothermal resource development.

Within the past few years, the energy shortage in this country has reminded us that the Nation's mineral resources are limited. As with oil supplies, there will undoubtedly be tightening of world supplies of minerals. Such a trend is leading to considerable expansion of domestic mineral prospecting, exploration and development. Much of this increased activity is on National Forest System lands where open to mineral exploration and development.

### **Forest Service Role in Minerals Management**

In the Mining and Minerals Policy Act of 1970, Congress declared that it is the continuing policy of the Federal Government, in the national interest, to foster and encourage private enterprise in (among other goals) the development of domestic mineral resources and the reclamation of mined land. This Federal policy obviously applies to National Forest System lands.

The Forest Service recognizes the importance of National Forest System mineral resources to the well-being of the Nation, and encourages bona-fide mineral exploration and development. But, it also recognizes its responsibility to protect the surface resources of the lands under its care. Thus, the Forest Service is faced with a double task: to make minerals from National Forest lands available to the national economy and, at the same time, to minimize the adverse impacts of mining activities on other resources.

<sup>2</sup>A moratorium on patent applications was enacted by Congress in 1994 and is still in effect.

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Land management planning, as mandated by the National Forest Management Act of 1976, is a principal tool for assuring that mineral resources are given proper consideration. Before plans are developed, specialists evaluate all resource activities including existing and potential mineral development. Planners and decision makers then formulate plans to minimize potential resource conflicts and maximize the various uses and values of National Forest System lands. Since minerals are usually hidden, relatively rare, and governed by certain preferential laws, the land management planning procedures provide for the availability of minerals and development of mineral operations where possible.

Minerals management of National Forest System lands requires interagency coordination and co-operation. Although the Forest Service is responsible for the management of surface resources of National Forest System lands, the Bureau of Land Management (BLM) in the Department of the Interior is primarily responsible for management of government-owned minerals. Since it is impossible to separate mineral operations from surface management, the agencies have developed cooperative procedures to accommodate their respective responsibilities.

### **Authority for Mineral Activities**

Mining and related activities on National Forest System lands are governed by specific laws that identify procedures and conditions under which prospecting, exploration, and development of minerals can be carried out.

**The General Mining Law of 1872.** The Mining Law of 1872, as amended, governs the prospecting for and the appropriation of metallic and most nonmetallic minerals on the 140 million acres of National Forest set up by proclamation from the public domain. Under the 1872 law, and its principal amendment of July 23, 1955, qualified prospectors may search for mineral deposits on these "public domain" lands. A prospector, upon discovering a valuable mineral deposit, may locate a mining claim. Recording that claim in the local courthouse and with the appropriate BLM State Office affords protection from subsequent locators. A mining claimant is entitled to reasonable access to the claim for further prospecting, mining or necessary related activities, subject to other laws and applicable regulations.

After meeting rather rigorous specific requirements of law, including a confirmation of the discovery of a valuable mineral deposit, a claimant may obtain legal title (patent)<sup>2</sup> to the surface and mineral rights on the claim. A patent application must be filed with the appropriate State Office of BLM. On National Forest lands, the Forest Service will conduct a mineral examination to determine if a valuable deposit has been found and, accordingly, recommend whether or not a patent should be granted. The Department of the Interior will consider the Forest Service's mineral report, plus information provided by the claimant, and determine whether a patent should be issued. If a patent is granted, legal title is conveyed, and thereafter, the Forest Service has no authority over the lands conveyed.

<sup>2</sup>A moratorium on patent applications was enacted by Congress in 1994 and is still in effect.

## QUESTIONS AND ANSWERS

Q: What is the purpose of the regulations under 36 CFR 228, issued by the Forest Service, concerning mining and prospecting operations in National Forests?

A: The regulations are intended to protect the non-mineral values of the National Forest System lands against unnecessary or unreasonable damages from prospecting, exploration, development, mining, and processing operations carried out under the authority of the Mining Law of 1872, as amended. They are intended to provide that protection without unreasonably inhibiting or restricting the activities of prospectors and miners.

Q: What is the authority for the Forest Service to issue these regulations?

A: The Organic Administration Act of June 4, 1897, authorizes the Secretary of Agriculture to regulate occupancy and use of the National Forests for the protection and management of their surface resources. All National Forest users, including prospectors and miners, are required to observe these regulations.

Q: When were these regulations issued?

A: On August 28, 1974

Q: Why did the Forest Service issue regulations at that time, when mineral operations had been carried out in National Forests for 70 years without them?

A: The Forest Service was given added direction through the National Environmental Policy Act of 1969 to promote efforts to prevent or eliminate damage to the environment. During the 1960's and early 1970's, there was increased prospecting and mining activity on the National Forests because of present or anticipated world mineral shortages. All indications were that such mineral activities on National Forests would increase intensively in the future, resulting in increased possibilities for surface resource damage.

Q: Do the regulations affect the mining laws and mining regulations of the Department of the Interior or its management of mineral resources?

A: No. Those laws and regulations relate to the search for minerals, their discovery, extraction, and processing. The Forest Service regulations apply to the protection of non-mineral resources affected by mineral related activities. The Department of the Interior manages Federally owned locatable and leasable minerals on National Forest lands. The Forest Service is charged with the management and protection of the surface resources only.

Q: Do these regulations apply to all minerals on all lands administered by the Forest Service?

A: No. They apply only to 'locatable minerals' on National Forest System lands open to operation under the General Mining Law of 1872, as amended, and to operations conducted under those laws. They cover those lands reserved from the public domain for National Forest purposes and not otherwise withdrawn from their operation. They also apply to a very small portion of lands acquired by the Federal Government for National Forest purposes. Nearly all National Forest lands that are open to the mining laws, and thus

## **QUESTIONS AND ANSWERS (continued)**

subject to these regulations, are west of the Mississippi River, including Alaska.

**Q:** Are there any laws or regulations that cover other mineral activities on the remaining National Forest lands?

**A:** Yes. The Mineral Leasing Act of 1920, as amended and supplemented, provides for the disposal of the fossil fuels, such as coal, oil, gas, oil shale, and related bitumens, as well as sodium, potassium, and sulfur (the latter only in certain States) from public domain National Forests. The Mineral Leasing Act for Acquired Lands of 1947 provides for the disposal of Federally owned leasable minerals on acquired National Forest System lands.

**Q:** Just exactly what is meant by an operating plan?

**A:** Operating plans, as required by these regulations, are documents by which mineral operators identify themselves, describe the work they intend to do, where and when they intend to do it, the nature of any proposed disturbance of surface resources and the steps they will take to protect those resources. An approved operating plan is basically an agreement between the Forest Service and the operator. The operator agrees to observe necessary and reasonable precautions, spelled out in this plan, to reduce damage to surface resources during operations activities and to rehabilitate disturbed areas as and when feasible. In turn, the Forest Service agrees that protection of surface resources will be adequate if operations are carried out in accordance with the approved plan.

**Q:** When is an operating plan necessary?

**A:** A plan of operations is required from anyone whose proposed operations, under the 1872 Mining Law, would cause 'significant disturbance of the surface resources.' An operator who is unsure if the proposed operations might disturb surface resources should file a 'Notice of Intention to Operate' with the Forest Service. It should describe briefly what the operator intends to do, where and when it is to be done, and routes and methods of access to the site. The Forest Service will analyze the proposal and within 15 days notify the operator as to whether or not an operating plan will be necessary.

**Q:** What is meant by a 'significant' disturbance of surface resources?

**A:** In general, operations using mechanized earthmoving equipment cause significant disturbance. Pick and shovel operations normally do not. Neither will explosives used underground, unless caving to the surface will result. Use of explosives on the surface generally will be considered to cause significant disturbance. Almost without exception, road and trail construction and tree clearing operations will cause

## **QUESTIONS AND ANSWERS (continued)**

significant surface disturbance. Disturbance by a particular type of operation on flat ground covered by sagebrush, for example, might not be considered significant. But, that same sort of operation in a high alpine meadow or near a stream could cause highly significant surface resource disturbance. The determination of what is significant, thus, depends on a case-by-case evaluation of proposed operations and the kinds of lands and other surface resources involved.

**Q:** What is the purpose of the bond requirement in the regulations?

**A:** The requirement for a bond is to assure compliance with the reclamation provision of the regulations and operating plans. The amount of the bond will be determined by the estimated cost of the work needed to reasonably reclaim surface resources disturbed by operations. If the operators fail to do the work, the bond or deposit will be used by the Forest Service to do the work or have it done.

**Q:** What action will the Forest Service take if miners and prospectors conduct operations on National Forest lands without an approved operating plan?

**A:** If the operators cause significant surface resource disturbance, a Forest Service officer will contact the operators, seeking cooperation to work up an operating plan. In cases where operators refuse to cooperate, the Forest Service will, as a last resort, take whatever legal action may be required to end unnecessary or unreasonable damage to surface resources, to reclaim disturbed areas, and seek payment for damages when appropriate. The Forest Service will first, however, make every effort to secure the cooperation of the operators.

**Q:** Do most proposed operations require preparation of environmental impact statements?

**A:** No. In most cases, environmental impact statements are not necessary. When they are, they generally are for new roads that may be needed across National Forest lands for access to mines, mills, and similar operations. Preparation of environmental impact statements is the responsibility of the Forest Service and other involved agencies.

**Q:** Do these regulations apply to National Forest wilderness?

**A:** Yes. In order to protect wilderness values, the standards under which the regulations will be applied in designated wilderness are somewhat stricter than on other lands. Operators may enter a wilderness and prospect for minerals under the Wilderness Act of 1964, but such activities must be carried out in a manner compatible with the preservation of the regulations. For example, special limitations and restrictions have been placed on the use of mechanized equipment.

exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights;

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection.* The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0114.

(e) *Persons with approved shares.* The application period for shares of the in-direct substitution exception for acquiring unprocessed timber originating from National Forest Systems lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be "banked" for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with §223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhaeuser, Tacoma, WA, 15,000,000 board feet.

"I certify that under the penalties and remedies provided in §492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of applicant's company's name, National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(C) *Selling and trading rights.* The purchase limit right obtained under this rule may be sold, traded, or otherwise

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#### APPENDIX A TO SUBPART E OF PART 228—GUIDELINES FOR PREPARING SURFACE USE PLANS OF OPERATION FOR DRILLING

AUTHORITY: 30 Stat. 35 and 36, as amended, (16 U.S.C. 478, 561); 41 Stat. 437, as amended, 61 Stat. 5102(d), 101 Stat. 1380-26 (30 U.S.C. 601); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 362); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

SOURCE: 39 FR 31317, Aug. 28, 1974, unless otherwise noted. Redesignated at 46 FR 36142, July 14, 1981.

#### Subpart A—Locatable Minerals

Sec. Purpose.

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228.2 Definitions.

228.3 Plan of operations—notice of intent—requirements.

228.5 Plan of operations—approval.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide

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for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

**§ 228.2 Scope.**

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however,* That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

**§ 228.3 Definitions.**

For the purposes of this part the following terms, respectively, shall mean:

(a) **Operations.** All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.

(b) **Operator.** A person conducting or proposing to conduct operations.

(c) **Person.** Any individual, partnership, corporation, association, or other legal entity.

(d) **Mining claim.** Any unpatented mining claim or unpatented millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*).

(e) **Authorized officer.** The Forest Service officer to whom authority to review and approve operating plans has been delegated.

**§ 228.4 Plan of operations—notice of intent—requirements.**

(a) Except as provided in paragraph (a)(1) of this section, a notice of intent to operate is required from any person proposing to conduct operations which might cause significant disturbance of surface resources. Such notice of intent to operate shall be submitted to the

District Ranger having jurisdiction over the area in which the operations will be conducted. Each notice of intent to operate shall identify the area involved, the nature of the proposed operations, the route of access to the area of operations, and the method of transport.

(1) A notice of intent to operate is not required for:

(i) Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes;

(ii) Prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study which generally might include searching for and occasionally removing small mineral samples or specimens, gold panning, metal detecting, non-motorized hand sluicing, using battery operated dry washers, and collecting of mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Underground operations which will not cause significant surface resource disturbance;

(v) Operations, which in their totality, will not cause significant surface resource disturbance which is substantially different than that caused by other users of the National Forest System who are not required to obtain a Forest Service special use authorization, contract, or other written authorization;

(vi) Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources; or

(vii) Operations for which a proposed plan of operations is submitted for approval;

(2) The District Ranger will, within 15 days of receipt of a notice of intent to operate, notify the operator if approval of a plan of operations is required before the operations may begin.

(3) An operator shall submit a proposed plan of operations to the District

Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed plan of operations, or a proposed supplemental plan of operations consistent with § 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

(4) If the District Ranger determines that any operation is causing, or will likely cause significant disturbance of surface resources, the District Ranger shall notify the operator that the operator must submit a proposed plan of operations for approval and that the operations can not be conducted until a plan of operations is approved.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 228.4(a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to avoid such damage.

Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 228.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used, or to be used as set forth in § 228.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 228.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of



**§ 228.10 Requirements for environmental protection.**

That days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

**§ 228.8 Requirements for environmental protection.**

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) **Air Quality.** Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1867 et seq.).

(b) **Water Quality.** Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.).

(c) **Solid Wastes.** Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) **Scenic Values.** Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) **Fisheries and Wildlife Habitat.** In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) **Roads.** Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or,

where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations:

- (1) Shall be closed to normal vehicular traffic.
- (2) Bridges and culverts shall be removed.
- (3) Cross drains, dips, or water bars shall be constructed, and

(4) The road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) **Reclamation.** Upon exhaustion of the mineral deposit, or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;
- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

**§ 228.9 Maintenance during operations, public safety.**

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

**§ 228.10 Cessation of operations, removal of structures and equipment.**

Unless otherwise agreed to by the authorized officer, operator shall remove

within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes:

- (a) Verification of intent to maintain the structures, equipment and other facilities;
- (b) The expected reopening date, and
- (c) An estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

**§ 228.11 Prevention and control of fire.**

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

**§ 228.12 Access.**

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 228.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 228.8(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 228.4 (d) and (e), the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 228.8(g), the authorized officer will notify the operator that performance under the bond has been completed: *Provided, however, that when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.*

[39 FR 31317, Aug. 28, 1974; 39 FR 32029, Sept. 4, 1974]

**§ 228.14 Appeals.**

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR Part 251, subpart C.

[54 FR 3362, Jan. 23, 1989]

**§ 228.15 Operations within National Forest Wilderness.**

- (a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.
- (b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 228.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.
- (c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such

surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 228.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment, and other facilities no longer needed for mining purposes in accordance with the provisions in § 228.10 and restore the surface in accordance with the requirements in § 228.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

- (1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff, and
- (2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.